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John S Beulick
Armstrong Teasdale LLP
One Metropolitan Square
Suite 2600
St Louis, MO 63102

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MAY 30 2007

OFFICE OF PETITIONS

In re Application of Ebertshauser	:	
Application No. 09/751,199	:	Decision on Petition
Filing Date: January 2, 2001	:	
Attorney Docket No. 9D-EC-19347	:	

This is a decision on the "petition" under 37 CFR 1.181, filed January 8, 2007, to withdraw the holding of abandonment. The "petition" is filed in the alternative under 37 CFR 1.137(b).

The petition under 37 CFR 1.181 is **dismissed as moot**.

The petition under 37 CFR 1.137(b) is **dismissed as moot**.

The application is NOT abandoned.

Facts:

The application was filed January 2, 2001.

A Notice to File Missing Parts was mailed February 16, 2001. The Notice was properly mailed to an address for GE Appliances ("GE").

The Office did not receive a timely reply to the Notice to File Missing Parts.

On an unknown date, the assignee transferred docketing responsibility for about 383 applications to Armstrong Teasdale LLP ("Armstrong").

A request to change the address and send future correspondence to Armstrong was filed March 28, 2002.

Armstrong determined about 42 of the 383 applications that were thought to be pending were actually abandoned.

On July 24, 2002, petitioner filed a petition under 37 CFR 1.181, or in the alternative, under 37 CFR 1.137(b).

The Office mailed a decision on September 16, 2002. The decision dismissed the petition under 37 CFR 1.181 and granted the petition under 37 CFR 1.137(b).

The file was sent to the Office of Initial Patent Examination for further processing.

The file was transferred to Technology Center 2100 on October 7, 2002.

On October 18, 2002, steps were taken to scan the paper file into an electronic format.

Office computer records indicate a "New or Additional Drawing" was filed November 13, 2002.

A Restriction requirement was mailed June 22, 2006.

A reply was timely filed Monday, July 24, 2006.

A non-final Office action was mailed September 5, 2006.

An amendment and a request for a one-month extension of time were timely filed on Monday, January 8, 2007.

The File Wrapper:

On October 18, 2002, steps were taken to scan the paper file into an electronic format.

The following papers were lost during the scanning process:

- (1) The request to change the address of record filed March 28, 2002,
- (2) The petition originally filed July 24, 2002,
- (3) A declaration filed July 24, 2002,
- (4) A decision on the petition mailed September 16, 2002, and
- (5) A "New or Additional Drawing" filed November 13, 2002.

As to items (2) and (3), the instant "petition" includes copies of both documents.

As to item (4), a copy of the decision cannot be located.

As to item (5), the remarks accompanying the amendment filed January 8, 2007, state the drawings filed on January 8, 2007, are a copy of the drawings originally filed during November of 2002.

Discussion of Petition:

A copy of the decision mailed September 16, 2002, is not in the file. Therefore, the Office cannot provide the exact reasons the petition to withdraw the holding of abandonment was dismissed. However, the Office notes the petition states Armstrong Teasdale LLP received 383 files from GE and discovered approximately 43 (42 plus the instant one) of the applications thought to be pending were actually abandoned.

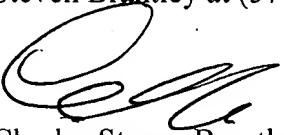
The fact that such a large number of applications were abandoned would be a factor to consider when determining the reliability of GE's docketing system and the evidentiary weight to be given to the copy of GE's file folder for the application.

The Office notes the petition does not state how many of the applications were abandoned as a result of GE failing to receive papers from the Office. If the number of applications is large, such a fact could imply the procedures to handle mail in place at GE are insufficiently reliable to overcome the presumption the USPS delivered the Notice to File Missing Parts.

For the reasons above, the Office acted correctly in dismissing the petition to withdraw the holding of abandonment and granting the petition under 37 CFR 1.137(b).

Technology Center Art Unit 2163 will be informed of the instant decision. Thereafter, the examiner will consider the amendment filed January 8, 2007, in due course.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions